S.B.CIVIL WRIT PETITION NO.1642/2005

Kalu Ram
v.
State of Rajasthan & Ors.

DATE OF ORDER :: 14th May, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Manish Shishodia, for the petitioner.
Mr. N.M.Lodha, Additional Advocate General.
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Alongwith a suit for possession of property, an application was filed by the plaintiff petitioner under Order 39 Rules 1 & 2 Code of Civil Procedure, 1908 seeking interim injunction to restrain the defendants from raising any construction on suit property. The trial court by its order dated 27.4.2004 rejected the application on the count that even by accepting a prima facie case in favour of the plaintiff, the balance of convenience is against him as the restrainment order shall cause an irreparable injury to the defendants and also to the students studying at the school running at suit property, whereas the construction if any raised can very well be demolished in the event of acceptance of suit. The appeal preferred giving challenge to the order dated 27.4.2004 also came to be rejected by an order dated 11.3.2005, hence this petition for writ is preferred.

The writ petition came up today before the Court for orders on an application preferred by the defendant respondents No.1 to 4 under Article 226(3) of the Constitution of India for vacation of interim order passed by this Court on 21.3.2005, however, with the consent of parties this petition for writ is finally heard.

It is the position admitted that a substantial construction has been made by the respondent defendants at the property in question and they are also running a school thereon. The trial court as well as the appellate court considered the entire matter meticulously and did not find balance of convenience in favour of granting the temporary injunction and rightly so for the simple reason that in the event of acceptance of the suit the construction made on the suit property can be demolished or even used by the plaintiff, if he desire, but if the temporary injunction as prayed is granted, that will not only spoil the building already constructed but shall also keep the pupil under danger of accident. That will also adversely effect the pious work of imparting education. For the reasons above, I do not find any reason to interfere with the orders passed by the trial court and the appellate court while exercising powers under Article 227 of the Constitution of India.

Accordingly, this petition for writ is dismissed.

(GOVIND MATHUR),J.

Kkm/ps.